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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. MAR 22 1993

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Washington, D.C. 20004

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W

Charles D. Ferris

Direct Dial Number
202/434-7301

March 22, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554 /

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March 22, 1993

Chairman James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Re: Ex Parte Presentation
MM Docket No. 92-265
MM Docket No. 92-266

Dear Mr. Chairman,

On March 11, Charles Dolan and I met with you and your staff on behalf of Cablevision Systems Corporation ("Cablevision") and Rainbow Programming Holdings, Inc. ("Rainbow") to discuss the rate regulation and program access provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). I would like to raise two additional points for your consideration as you begin the task of finalizing the orders in the above-captioned proceedings.

As we discussed when we met, and as I reiterated in a conversation last week with your staff, cable operators need a transition period to bring their rates into compliance with the new rules. A transition is necessary to minimize financial disruption in the industry, and to ensure continued service to the public at the level to which it has become accustomed. Specifically with respect to the rates for the basic service tier, this transition could be eased by a rule that *permits operators to bundle the rates for basic equipment and service for at least twelve months*. So long as the bundled rate fell within a combined service/equipment benchmark, the rate would be deemed reasonable.^{22/} Bundling would provide an operator with greater pricing flexibility and, during the transition period, the operator would be able to pursue additional sources of revenue to offset reductions in cash flow that may result from the imposition of rate regulation.

^{22/} Ideally, bundling of basic services and equipment would be permitted beyond a transition period; I am assuming that the rates for cable programming services and associated equipment will be measured against a combined services/equipment benchmark.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Chairman James H. Quello

March 22, 1993

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With respect to program access requirements, the 1992 Cable Act permits differences in pricing based upon, *inter alia*, differences in the "offering of service." The Commission should take into account the manner in which a multichannel video programming distributor positions a particular programming service (as well as, among other things, all other material contract terms and conditions, and the effectiveness, quality and service offerings of the distributor) in determining whether the price, terms, and conditions under which the programming is made available to the distributor constitutes "discrimination" under Section 19 of the 1992 Cable Act.

A Rainbow-managed program service may be offered in some instances as part of the entry level basic tier of satellite services; in other instances as a stand-alone *a la carte* service; and in still other cases as part of a "hybrid" configuration (e.g., a discretionary package with or without an *a la carte* option). *Multichannel video programming distributors who offer a particular service in different configurations (e.g., a la carte (like HBO) vs. as part of the entry level basic tier (like CNN) vs. a "hybrid" configuration) should not be entitled to comparable rates even if all other factors are comparable.* If the Commission decides to adopt a regulatory scheme under which a range of wholesale programming charges in comparable situations would be presumed reasonable and non-discriminatory, a separate range should be adopted for each mode of positioning described above. Rates outside such a range should not be deemed presumptively *unreasonable*.

I hope these suggestions are helpful in your efforts to frame the implementing rules for the 1992 Cable Act. I would be happy to discuss these or any other issues with you at your convenience.

Two copies of this letter have been submitted to the Secretary's office in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,



Charles D. Ferris

cc: Robert Corn-Revere

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Charles D. Ferris

Direct Dial Number
202/434-7301

March 22, 1993

Honorable Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Re: Ex Parte Presentation
MM Docket No. 92-265
MM Docket No. 92-266

Dear Commissioner Duggan,

On March 11, Charles Dolan and I met with you and your staff on behalf of Cablevision Systems Corporation ("Cablevision") and Rainbow Programming Holdings, Inc. ("Rainbow") to discuss the rate regulation and program access provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). I would like to raise two additional points for your consideration as you begin the task of finalizing the orders in the above-captioned proceedings.

As we discussed when we met, and as I reiterated in a conversation last week with your staff, cable operators need a transition period to bring their rates into compliance with the new rules. A transition is necessary to minimize financial disruption in the industry, and to ensure continued service to the public at the level to which it has become accustomed. Specifically with respect to the rates for the basic service tier, this transition could be eased by a rule that *permits operators to bundle the rates for basic equipment and service for at least twelve months*. So long as the bundled rate fell within a combined service/equipment benchmark, the rate would be deemed reasonable.^{2/} Bundling would provide an operator with greater pricing flexibility and, during the transition period, the operator would be able to pursue additional sources of revenue to offset reductions in cash flow that may result from the imposition of rate regulation.

^{2/} Ideally, bundling of basic services and equipment would be permitted beyond a transition period; I am assuming that the rates for cable programming services and associated equipment will be measured against a combined services/equipment benchmark.

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Hon. Ervin S. Duggan

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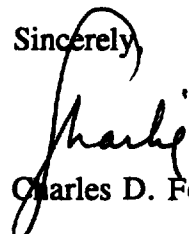
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Sincerely,



Charles D. Ferris

cc: John C. Hollar